

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

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CERRO COPPER PRODUCTS CO.,

Plaintiff,

v.

MONSANTO COMPANY,

Defendant.

Civil Action No.

92-CV-204-WDS

**ANSWER OF DEFENDANT  
MONSANTO COMPANY TO AMENDED COMPLAINT**

Defendant Monsanto Company (hereinafter "Monsanto") answers  
the Amended Complaint herein as follows:

**INTRODUCTION**

**COMPLAINT:**

1. Plaintiff brings this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), in particular Sections 107(a) and 113(b), thereof, 42 U.S.C. §9607(a) and §9613(b), to recover response costs expended to address contamination by Defendant of property owned by Plaintiff. Plaintiff further asserts claims for damages and reimbursement under state common law.

**ANSWER:**

1. Monsanto admits that this purports to be an action brought pursuant to 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, and that Plaintiff further attempts to assert claims for damages and reimbursement under state common law. Monsanto denies each and every other allegation of paragraph 1 of the Amended Complaint.

## JURISDICTION AND VENUE

### COMPLAINT:

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §9607 and §9613(b); 28 U.S.C. §1331 and 28 U.S.C. §1367 (codifying the doctrines of ancillary and/or pendent jurisdiction).

### ANSWER:

2. The allegations of paragraph 2 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

### COMPLAINT:

3. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and 42 U.S.C. §9613(b) because the claims stated herein arose and the threatened and actual releases of hazardous substances occurred in this district.

### ANSWER:

3. Monsanto admits that Plaintiff purports to state claims that would cause venue to be proper in this district pursuant to 28 U.S.C. §1391(b) and 42 U.S.C. §9613(b). Monsanto denies each and every other allegation of paragraph 3 of the Amended Complaint.

## PARTIES

### COMPLAINT:

4. Plaintiff is a Delaware corporation with its principal place of business in Sauget, Illinois.

### ANSWER:

4. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 4 of the Amended Complaint.

ANSWER:

8. The allegations of paragraph 8 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

9. On or about July 5, 1990, the State of Illinois filed a civil action against Plaintiff for declaratory relief and recovery of costs pursuant to CERCLA, the Illinois Environmental Protection Act and State common law nuisance.

ANSWER:

9. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 9 of the Amended Complaint.

COMPLAINT:

10. The State of Illinois alleged in the Complaint that Dead Creek Segment A had received a variety of waste or other materials as a result of direct and indirect discharges of industrial effluent, precipitation runoff, seepage and other means and as a result, had become contaminated.

ANSWER:

10. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 10 of the Amended Complaint.

COMPLAINT:

11. The wastes and other materials contaminating Dead Creek Segment A include "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

ANSWER:

11. The allegations of paragraph 11 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

12. On or about July 5, 1990, Plaintiff and the State of Illinois amicably resolved the aforementioned litigation by entering into a Consent Decree, a copy of which is attached as Exhibit A, pursuant to which Plaintiff has implemented the removal action recommended in the Site Investigation/Feasibility Study which had been conducted by Plaintiff for Dead Creek Segment A.

ANSWER:

12. Monsanto admits that Plaintiff has attached an Exhibit A to the Amended Complaint that purports to be a consent decree. Monsanto lacks knowledge or information sufficient to form a belief as to the accuracy of Exhibit A or the truth or falsity of the remaining allegations of paragraph 12 of the Amended Complaint.

COUNT I

COMPLAINT:

13. Plaintiff brings this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), in particular Section 107(a)(3), thereof, 42 U.S.C. §9607(a)(3), to recover response costs expended to address contamination by Defendant of property owned by Plaintiff.

ANSWER:

13. Monsanto admits that Count I purports to be a claim brought pursuant to 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986. Monsanto denies each and every other allegation of paragraph 13 of the Amended Complaint.

COMPLAINT:

14. This Court has jurisdiction over the subject matter of this action pursuant to Section 107 of CERCLA, 42 U.S.C. §9607;

28 U.S.C. §1331 and 28 U.S.C. §1367 (codifying the doctrines of ancillary and/or pendent jurisdiction).

ANSWER:

14. The allegations of paragraph 14 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

15. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) because the claims stated herein arose and the threatened and actual releases of hazardous substances occurred in this district.

ANSWER:

15. Monsanto admits that Plaintiff purports to state claims that would cause venue to be proper in this district pursuant to 28 U.S.C. §1391(b). Monsanto denies each and every other allegation of paragraph 15 of the Amended Complaint.

COMPLAINT:

16. Plaintiff is a Delaware corporation with its principal place of business in Sauget, Illinois.

ANSWER:

16. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 16 of the Amended Complaint.

COMPLAINT:

17. Defendant is a Delaware corporation with its principal place of business in St. Louis, Missouri.

ANSWER:

17. Monsanto admits that it is a Delaware corporation with its principal place of business in St. Louis County, Missouri.

COMPLAINT:

18. Plaintiff owns and operates a manufacturing facility (the "Cerro Plant") in the Village of Sauget, St. Clair County, Illinois.

ANSWER:

18. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 18 of the Amended Complaint.

COMPLAINT:

19. The Cerro Plant currently encompasses within the boundaries of its property, a portion of a watercourse commonly known as Dead Creek (hereinafter "Dead Creek Segment A").

ANSWER:

19. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 19 of the Amended Complaint.

COMPLAINT:

20. Dead Creek Segment A is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(a)(9).

ANSWER:

20. The allegations of paragraph 20 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

21. On or about July 5, 1990, the State of Illinois filed a civil action against Plaintiff for declaratory relief and recovery of costs pursuant to CERCLA, the Illinois Environmental Protection Act and State common law nuisance.

ANSWER:

21. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 21 of the Amended Complaint.

COMPLAINT:

22. The State of Illinois alleged in the Complaint that Dead Creek Segment A had received a variety of waste or other materials as a result of direct and indirect discharges of industrial effluent, precipitation runoff, seepage and other means and as a result, had become contaminated.

ANSWER:

22. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 22 of the Amended Complaint.

COMPLAINT:

23. The wastes and other materials contaminating Dead Creek Segment A include "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

ANSWER:

23. The allegations of paragraph 23 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

24. On or about July 5, 1990, Plaintiff and the State of Illinois amicably resolved the aforementioned litigation by entering into a Consent Decree, a copy of which is attached as Exhibit A, pursuant to which Plaintiff has implemented the removal action recommended in the Site Investigation/Feasibility Study which had been conducted by Plaintiff for Dead Creek Segment A.

ANSWER:

24. Monsanto admits that Plaintiff has attached an Exhibit A to the Amended Complaint that purports to be a consent decree. Monsanto lacks knowledge or information sufficient to form a belief as to the accuracy of Exhibit A or the truth or falsity of the remaining allegations of paragraph 24 of the Amended Complaint.

COMPLAINT:

25. Upon information and belief, prior to August 1977, Defendant operated a PCB production facility at its Krummrich Manufacturing Plant which is located at the northern tip of Dead Creek Segment A. In addition, since its acquisition of the Krummrich facility in 1917, Defendant has used the facility for a variety of purposes including the manufacture and refinement of chemicals for commercial, industrial and agricultural use.

ANSWER:

25. Monsanto admits that prior to August 1977 it produced polychlorinated biphenyls ("PCBs") at its Krummrich Plant, which is located north of Dead Creek Segment A. Monsanto further admits that it has manufactured and refined chemicals at the Krummrich Plant for commercial, industrial, and agricultural use since its acquisition of the Plant in 1917. Monsanto denies the remaining allegations of paragraph 25 of the Amended Complaint.

COMPLAINT:

26. During the course of Defendant's operation of its Krummrich facility, it discharged industrial wastewaters containing hazardous substances, including but not limited to PCB's and PCB manufacturing precursors, into Dead Creek Segment A.



ANSWER:

26. Monsanto denies the allegations contained in paragraph 26 of the Amended Complaint.

COMPLAINT:

27. Section 107(a)(3) of CERCLA, 42 U.S.C. §9607(a)(3), provides, in pertinent part:

any person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances, owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances . . . shall be liable for . . . any necessary costs of response incurred by any other person consistent with the National Contingency Plan.

ANSWER:

27. Monsanto admits that Plaintiff purports to quote from §107 of CERCLA. All other allegations of paragraph 27 of the Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

28. Defendant is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21), who otherwise arranged for the disposal of its industrial wastewaters from the Krummrich facility which contained hazardous substances by discharging such hazardous substances into Dead Creek Segment A. Therefore, Defendant is a responsible person within the meaning of Section 107 of CERCLA, 42 U.S.C. §9607.

ANSWER:

28. Monsanto denies the allegations contained in paragraph 28 of the Amended Complaint.

COMPLAINT:

29. Defendant's discharge of wastewater containing hazardous substances into Dead Creek Segment A constitutes a "release" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

ANSWER:

29. Monsanto denies the allegations contained in paragraph 29 of the Amended Complaint.

COMPLAINT:

30. As a result of Defendant's discharge of hazardous substances into Dead Creek Segment A, Plaintiff has incurred necessary response costs in the approximate amount of \$12,836,609. Plaintiff has demanded that Defendant reimburse it for these costs, but Defendant has refused.

ANSWER:

30. Monsanto admits that Plaintiff has demanded that Monsanto reimburse it for costs allegedly relating to Dead Creek Segment A and that Monsanto has refused to pay the amount demanded. Monsanto denies all of the remaining allegations of paragraph 30 of the Amended Complaint.

COMPLAINT:

31. All response costs incurred by Plaintiff to remediate Dead Creek Segment A have been consistent with the National Contingency Plan, 40 C.F.R. Part 300.

ANSWER:

31. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 31 of the Amended Complaint.

COMPLAINT:

32. Pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. §9607(a)(3), Defendant is liable to Plaintiff for all past

response costs incurred by Plaintiff in remediating Dead Creek Segment A, plus pre-judgment and post-judgment interest.

ANSWER:

32. The allegations of paragraph 32 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COUNT II

COMPLAINT:

33. Plaintiff brings this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), in particular Section 107(a)(2), thereof, 42 U.S.C. §9607(a)(2), to recover response costs expended to address contamination by Defendant of property owned by Plaintiff.

ANSWER:

33. Monsanto admits that Count II purports to be a claim brought pursuant to 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986. Monsanto denies each and every other allegation of paragraph 33 of the Amended Complaint.

COMPLAINT:

34. This Court has jurisdiction over the subject matter of this action pursuant to Section 107 of CERCLA, 42 U.S.C. §9607; 28 U.S.C. §1331 and 28 U.S.C. §1367 (codifying the doctrines of ancillary and/or pendent jurisdiction).

ANSWER:

34. The allegations of paragraph 34 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

35. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) because the claims stated herein arose and the threatened and actual releases of hazardous substances occurred in this district.

ANSWER:

35. Monsanto admits that Plaintiff purports to state claims that would cause venue to be proper in this district pursuant to 28 U.S.C. §1391(b). Monsanto denies each and every other allegation of paragraph 35 of the Amended Complaint.

COMPLAINT:

36. Plaintiff is a Delaware corporation with its principal place of business in Sauget, Illinois.

ANSWER:

36. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 36 of the Amended Complaint.

COMPLAINT:

37. Defendant is a Delaware corporation with its principal place of business in St. Louis, Missouri.

ANSWER:

37. Monsanto admits that it is a Delaware corporation with its principal place of business in St. Louis County, Missouri.

COMPLAINT:

38. Plaintiff owns and operates a manufacturing facility (the "Cerro Plant") in the Village of Sauget, St. Clair County, Illinois.

ANSWER:

38. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 38 of the Amended Complaint.

COMPLAINT:

39. The Cerro Plant currently encompasses within the boundaries of its property, a portion of a watercourse commonly known as Dead Creek (hereinafter "Dead Creek Segment A").

ANSWER:

39. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 39 of the Amended Complaint.

COMPLAINT:

40. Dead Creek Segment A is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(a)(9).

ANSWER:

40. The allegations of paragraph 40 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

41. On or about July 5, 1990, the State of Illinois filed a civil action against Plaintiff for declaratory relief and recovery of costs pursuant to CERCLA, the Illinois Environmental Protection Act and State common law nuisance.

ANSWER:

41. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 41 of the Amended Complaint.

COMPLAINT:

42. The State of Illinois alleged in the Complaint that Dead Creek Segment A had received a variety of waste or other materials as a result of direct and indirect discharges of industrial effluent, precipitation runoff, seepage and other means and as a result, had become contaminated.

ANSWER:

42. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 42 of the Amended Complaint.

COMPLAINT:

43. The wastes and other materials contaminating Dead Creek Segment A include "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

ANSWER:

43. The allegations of paragraph 43 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

44. On or about July 5, 1990, Plaintiff and the State of Illinois amicably resolved the aforementioned litigation by entering into a Consent Decree, a copy of which is attached as Exhibit A, pursuant to which Plaintiff has implemented the removal action recommended in the Site Investigation/Feasibility Study which had been conducted by Plaintiff for Dead Creek Segment A.

ANSWER:

44. Monsanto admits that Plaintiff has attached an Exhibit A to the Amended Complaint that purports to be a consent decree. Monsanto lacks knowledge or information sufficient to form a belief as to the accuracy of Exhibit A or the truth or falsity of

the remaining allegations of paragraph 44 of the Amended Complaint.

COMPLAINT:

45. Upon information and belief, prior to August 1977, Defendant operated a PCB production facility at its Krummrich Manufacturing Plant which is located at the northern tip of Dead Creek Segment A. In addition, since its acquisition of the Krummrich facility in 1917, Defendant has used the facility for a variety of purposes including the manufacture and refinement of chemicals for commercial, industrial and agricultural use.

ANSWER:

45. Monsanto admits that prior to August 1977 it produced polychlorinated biphenyls ("PCBs") at its Krummrich Plant, which is located north of Dead Creek Segment A. Monsanto further admits that it has manufactured and refined chemicals at the Krummrich Plant for commercial, industrial, and agricultural use since its acquisition of the Plant in 1917. Monsanto denies the remaining allegations of paragraph 45 of the Amended Complaint.

COMPLAINT:

46. During the course of Defendant's operation of its Krummrich facility, it discharged industrial wastewaters containing hazardous substances, including but not limited to PCB's and PCB manufacturing precursors, into Dead Creek Segment A.

ANSWER:

46. Monsanto denies the allegations contained in paragraph 46 of the Amended Complaint.

COMPLAINT:

47. Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a), provides, in pertinent part:

any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances

were disposed of . . . is liable for any necessary costs of response incurred by any other person consistent with the National Contingency Plan.

ANSWER:

47. Monsanto admits that Plaintiff purports to quote from §107 of CERCLA. All other allegations of paragraph 47 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

48. Defendant's Krummrich Manufacturing Plant, together with its appurtenant equipment, pipes, drainage and sewer systems constitutes a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(a)(9).

ANSWER:

48. The allegations of paragraph 48 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

49. Defendant is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21), who owned and operated the Krummrich facility at the time its industrial wastewaters containing hazardous substances were disposed of through the Krummrich facility drainage and/or sewer system and released into Dead Creek Segment A. Therefore, Defendant is a responsible person within the meaning of Section 107 of CERCLA, 42 U.S.C. §9607.

ANSWER:

49. Monsanto denies the allegations contained in paragraph 49 of the Amended Complaint.

COMPLAINT:

50. Defendant's discharge of wastewater containing hazardous substances into Dead Creek A constitutes a "release"



within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

ANSWER:

50. Monsanto denies the allegations contained in paragraph 50 of the Amended Complaint.

COMPLAINT:

51. As a result of Defendant's release of hazardous substances from the Krummrich Manufacturing Plant and its discharge of hazardous substances into Dead Creek A, Plaintiff has incurred necessary response costs in the approximate amount of \$12,836,609. Plaintiff has demanded that Defendant reimburse it for these costs, but Defendant has refused.

ANSWER:

51. Monsanto admits that Plaintiff has demanded that Monsanto reimburse it for costs allegedly relating to Dead Creek Segment A and that Monsanto has refused to pay the amount demanded. Monsanto denies all of the remaining allegations of paragraph 51 of the Amended Complaint.

COMPLAINT:

52. All response costs incurred by Plaintiff to remediate Dead Creek Segment A have been consistent with the National Contingency Plan, 40 C.F.R. Part 300.

ANSWER:

52. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 52 of the Amended Complaint.

COMPLAINT:

53. Pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2), Defendant is liable to Plaintiff for all past response costs incurred by Plaintiff in remediating Dead Creek Segment A, plus pre-judgment and post-judgment interest.

ANSWER:

53. The allegations of paragraph 53 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COUNT III

COMPLAINT:

54. Plaintiff brings this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), in particular Section 113(f), thereof, 42 U.S.C. §9613(f), to recover response costs expended to address contamination by Defendant of property owned by Plaintiff.

ANSWER:

54. Monsanto admits that Count III purports to be a claim brought pursuant to 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986. Monsanto denies each and every other allegation of paragraph 54 of the Amended Complaint.

COMPLAINT:

55. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. §9613; 28 U.S.C. §1331 and 28 U.S.C. §1367 (codifying the doctrines of ancillary and/or pendent jurisdiction).

ANSWER:

55. The allegations of paragraph 55 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

56. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and 42 U.S.C. §9613(b) because the claims stated herein

arose and the threatened and actual releases of hazardous substances occurred in this district.

ANSWER:

56. Monsanto admits that Plaintiff purports to state claims that would cause venue to be proper in this district pursuant to 28 U.S.C. §1391(b) and 42 U.S.C. §9613(b). Monsanto denies each and every other allegation of paragraph 56 of the Amended Complaint.

COMPLAINT:

57. Plaintiff is a Delaware corporation with its principal place of business in Sauget, Illinois.

ANSWER:

57. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 57 of the Amended Complaint.

COMPLAINT:

58. Defendant is a Delaware corporation with its principal place of business in St. Louis, Missouri.

ANSWER:

58. Monsanto admits that it is a Delaware corporation with its principal place of business in St. Louis County, Missouri.

COMPLAINT:

59. Plaintiff owns and operates a manufacturing facility (the "Cerro Plant") in the Village of Sauget, St. Clair County, Illinois.

ANSWER:

59. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 59 of the Amended Complaint.

COMPLAINT:

60. The Cerro Plant currently encompasses within the boundaries of its property, a portion of a watercourse commonly known as Dead Creek (hereinafter "Dead Creek Segment A").

ANSWER:

60. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 60 of the Amended Complaint.

COMPLAINT:

61. Dead Creek Segment A is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(a)(9).

ANSWER:

61. The allegations of paragraph 61 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

62. On or about July 5, 1990, the State of Illinois filed a civil action against Plaintiff for declaratory relief and recovery of costs pursuant to CERCLA, the Illinois Environmental Protection Act and State common law nuisance.

ANSWER:

62. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 62 of the Amended Complaint.

COMPLAINT:

63. The State of Illinois alleged in the Complaint that Dead Creek Segment A had received a variety of waste or other materials as a result of direct and indirect discharges of industrial effluent, precipitation runoff, seepage and other means and as a result, had become contaminated.

ANSWER:

63. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 63 of the Amended Complaint.

COMPLAINT:

64. The wastes and other materials contaminating Dead Creek Segment A include "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

ANSWER:

64. The allegations of paragraph 64 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

65. On or about July 5, 1990, Plaintiff and the State of Illinois amicably resolved the aforementioned litigation by entering into a Consent Decree, a copy of which is attached as Exhibit A, pursuant to which Plaintiff has implemented the removal action recommended in the Site Investigation/Feasibility Study which had been conducted by Plaintiff for Dead Creek Segment A.

ANSWER:

65. Monsanto admits that Plaintiff has attached an Exhibit A to the Amended Complaint that purports to be a consent decree. Monsanto lacks knowledge or information sufficient to form a belief as to the accuracy of Exhibit A or the truth or falsity of the remaining allegations of paragraph 65 of the Amended Complaint.

COMPLAINT:

66. Upon information and belief, prior to August 1977, Defendant operated a PCB production facility at its Krummrich Manufacturing Plant which is located at the northern tip of Dead Creek Segment A. In addition, since its acquisition of the

Krummrich facility in 1917, Defendant has used the facility for a variety of purposes including the manufacture and refinement of chemicals for commercial, industrial and agricultural use.

ANSWER:

66. Monsanto admits that prior to August 1977 it produced polychlorinated biphenyls ("PCBs") at its Krummrich Plant, which is located north of Dead Creek Segment A. Monsanto further admits that it has manufactured and refined chemicals at the Krummrich Plant for commercial, industrial, and agricultural use since its acquisition of the Plant in 1917. Monsanto denies the remaining allegations of paragraph 66 of the Amended Complaint.

COMPLAINT:

67. During the course of Defendant's operation of its Krummrich Manufacturing Plant, it discharged industrial wastewaters containing hazardous substances, including but not limited to PCB's and PCB manufacturing precursors, into Dead Creek Segment A.

ANSWER:

67. Monsanto denies the allegations contained in paragraph 67 of the Amended Complaint.

COMPLAINT:

68. Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2), provides, in pertinent part:

any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of . . . is liable for any necessary costs of response incurred by any other person consistent with the National Contingency Plan.

ANSWER:

68. Monsanto admits that Plaintiff purports to quote from §107 of CERCLA. All other allegations of paragraph 68 of the

Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

69. Section 107(a)(3) of CERCLA, 42 U.S.C. §9607(a)(3), provides, in pertinent part:

any person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances, owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances . . . shall be liable for . . . any necessary costs of response incurred by any other person consistent with the National Contingency Plan.

ANSWER:

69. Monsanto admits that Plaintiff purports to quote from §107 of CERCLA. All other allegations of paragraph 69 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

70. Section 113(f) of CERCLA, 42 U.S.C. §9613(f), provides that any party who is liable or potentially liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), is also liable in contribution.

ANSWER:

70. The allegations of paragraph 70 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

71. Defendant is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21), who otherwise arranged for the

disposal of its industrial wastewaters from the Krummrich facility which contained hazardous substances by discharging such hazardous substances into Dead Creek Segment A or who owned and operated the Krummrich facility at the time its industrial wastewaters containing hazardous substances were disposed of through the Krummrich facility drainage and/or sewer system and released into Dead Creek A. Therefore, Defendant is a responsible person within the meaning of Section 107 of CERCLA, 42 U.S.C. §9607.

ANSWER:

71. Monsanto denies the allegations contained in paragraph 71 of the Amended Complaint.

COMPLAINT:

72. Defendant's discharge of wastewater containing hazardous substances into Dead Creek Segment A constitutes a "release" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

ANSWER:

72. Monsanto denies the allegations contained in paragraph 72 of the Amended Complaint.

COMPLAINT:

73. As a result of Defendant's discharge of hazardous substances into Dead Creek Segment A, Plaintiff has incurred necessary response costs in the approximate amount of \$12,836,609. Plaintiff has demanded that Defendant reimburse it for these costs, but Defendant has refused.

ANSWER:

73. Monsanto admits that Plaintiff has demanded that Monsanto reimburse it for costs allegedly relating to Dead Creek Segment A and that Monsanto has refused to pay the amount demanded. Monsanto denies all of the remaining allegations of paragraph 73 of the Amended Complaint.



COMPLAINT:

74. All response costs incurred by Plaintiff to remediate Dead Creek Segment A have been consistent with the National Contingency Plan, 40 C.F.R. Part 300.

ANSWER:

74. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 74 of the Amended Complaint.

COMPLAINT:

75. Pursuant to Section 113(f) of CERCLA, 42 U.S.C. §9613(f), Defendant is liable to Plaintiff for all past response costs incurred by Plaintiff in remediating Dead Creek Segment A, plus pre-judgment and post-judgment interest.

ANSWER:

75. The allegations of paragraph 75 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COUNT IV

STRICT LIABILITY

COMPLAINT:

76. Plaintiff brings this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), in particular Sections 107(a) and 113(b), thereof, 42 U.S.C. §9607 and §9613(b), to recover response costs expended by Plaintiff to address contamination by Defendant of property owned by Plaintiff. Plaintiff further asserts claims for damages and reimbursement under state common law.

ANSWER:

76. Monsanto admits that Count IV attempts to assert a claim under state common law. Monsanto denies each and every other allegation of paragraph 76 of the Amended Complaint.

COMPLAINT:

77. This Court has jurisdiction over the subject matter pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §9607 and §9613(b); 28 U.S.C. §1331 and 28 U.S.C. §1367 (codifying the doctrines of ancillary and/or pendent jurisdiction).

ANSWER:

77. The allegations of paragraph 77 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

78. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and 42 U.S.C. §9613(b) because the claims stated herein arose and the threatened and actual releases of hazardous substances occurred in this district.

ANSWER:

78. Monsanto admits that Plaintiff purports to state claims that would cause venue to be proper in this district pursuant to 28 U.S.C. §1391(b). Monsanto denies each and every other allegation of paragraph 78 of the Amended Complaint.

COMPLAINT:

79. Plaintiff is a Delaware corporation with its principal place of business in Sauget, Illinois.

ANSWER:

79. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 79 of the Amended Complaint.

COMPLAINT:

80. Defendant is a Delaware corporation with its principal place of business in St. Louis, Missouri.

ANSWER:

80. Monsanto admits that it is a Delaware corporation with its principal place of business in St. Louis County, Missouri.

COMPLAINT:

81. Plaintiff owns and operates a manufacturing facility (the "Cerro Plant") in the Village of Sauget, St. Clair County, Illinois.

ANSWER:

81. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 81 of the Amended Complaint.

COMPLAINT:

82. The Cerro Plant currently encompasses within the boundaries of its property, a portion of a watercourse commonly known as Dead Creek (hereinafter "Dead Creek Segment A").

ANSWER:

82. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 82 of the Amended Complaint.

COMPLAINT:

83. Dead Creek Segment A is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(a)(9).

ANSWER:

83. The allegations of paragraph 83 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

84. On or about July 5, 1990, the State of Illinois filed a civil action against Plaintiff for declaratory relief and

recovery of costs pursuant to CERCLA, the Illinois Environmental Protection Act and State common law nuisance.

ANSWER:

84. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 84 of the Amended Complaint.

COMPLAINT:

85. The State of Illinois alleged in the Complaint that Dead Creek Segment A had received a variety of waste or other materials as a result of direct and indirect discharges of industrial effluent, precipitation runoff, seepage and other means and as a result, had become contaminated.

ANSWER:

85. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 85 of the Amended Complaint.

COMPLAINT:

86. The wastes and other materials contaminating Dead Creek Segment A include "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

ANSWER:

86. The allegations of paragraph 86 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

87. On or about July 5, 1990, Plaintiff and the State of Illinois amicably resolved the aforementioned litigation by entering into a Consent Decree, a copy of which is attached as Exhibit A, pursuant to which Plaintiff has implemented the removal action recommended in the Site Investigation/Feasibility Study which had been conducted by Plaintiff for Dead Creek Segment A.

ANSWER:

87. Monsanto admits that Plaintiff has attached an Exhibit A to the Amended Complaint that purports to be a consent decree. Monsanto lacks knowledge or information sufficient to form a belief as to the accuracy of Exhibit A or the truth or falsity of the remaining allegations of paragraph 87 of the Amended Complaint.

COMPLAINT:

88. Upon information and belief, prior to August 1977, Defendant operated a PCB production facility at its Krummrich Manufacturing Plant which is located at the northern tip of Dead Creek Segment A. In addition, since its acquisition of the Krummrich facility in 1917, Defendant has used the facility for a variety of purposes including the manufacture and refinement of chemicals for commercial, industrial and agricultural use.

ANSWER:

88. Monsanto admits that prior to August 1977 it produced polychlorinated biphenyls ("PCBs") at its Krummrich Plant, which is located north of Dead Creek Segment A. Monsanto further admits that it has manufactured and refined chemicals at the Krummrich Plant for commercial, industrial, and agricultural use since its acquisition of the Plant in 1917. Monsanto denies the remaining allegations of paragraph 88 of the Amended Complaint.

COMPLAINT:

89. During the course of Defendant's operation of its Krummrich facility, it discharged industrial wastewaters containing hazardous substances, including but not limited to PCB's and PCB manufacturing precursors, into Dead Creek Segment A.

ANSWER:

89. Monsanto denies the allegations contained in paragraph 89 of the Amended Complaint.

COMPLAINT:

90. Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2), provides, in pertinent part:

any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of . . . is liable for any necessary costs of response incurred by any other person consistent with the National Contingency Plan.

ANSWER:

90. Monsanto admits that Plaintiff purports to quote from §107 of CERCLA. All other allegations of paragraph 90 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

91. Defendant's Krummrich Manufacturing Plant, together with its appurtenant equipment, pipes, drainage and sewer systems constitutes a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(a)(9).

ANSWER:

91. The allegations of paragraph 91 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

92. Section 107(a)(3) of CERCLA, 42 U.S.C. §9607(a)(3), provides, in pertinent part:

any person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances, owned or

possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances . . . shall be liable for . . . any necessary costs of response incurred by any other person consistent with the National Contingency Plan.

ANSWER:

92. Monsanto admits that Plaintiff purports to quote from §107 of CERCLA. All other allegations of paragraph 92 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

93. Section 113(f) of CERCLA, 42 U.S.C. §9613(f), provides that any person who is liable or potentially liable, jointly and severally, under §107(a) is also liable in contribution.

ANSWER:

93. The allegations of paragraph 93 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

94. Defendant is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21), who otherwise arranged for the disposal of its industrial wastewaters from the Krummrich facility which contained hazardous substances by discharging such hazardous substances into Dead Creek Segment A or who owned and operated the Krummrich facility at the time its industrial wastewaters containing hazardous substances were disposed of through the Krummrich facility drainage and/or sewer system and released into Dead Creek A. Therefore, Defendant is a responsible person within the meaning of Section 107 of CERCLA, 42 U.S.C. §9607.

ANSWER:

94. Monsanto denies the allegations contained in paragraph 94 of the Amended Complaint.

COMPLAINT:

95. Defendant's discharge of wastewater containing hazardous substances into Dead Creek Segment A constitutes a "release" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

ANSWER:

95. Monsanto denies the allegations contained in paragraph 95 of the Amended Complaint.

COMPLAINT:

96. As a result of Defendant's discharge of hazardous substances into Dead Creek Segment A, Plaintiff has incurred necessary response costs in the approximate amount of \$12,836,609. Plaintiff has demanded that Defendant reimburse it for these costs, but Defendant has refused.

ANSWER:

96. Monsanto admits that Plaintiff has demanded that Monsanto reimburse it for costs allegedly relating to Dead Creek Segment A and that Monsanto has refused to pay the amount demanded. Monsanto denies all of the remaining allegations of paragraph 96 of the Amended Complaint.

COMPLAINT:

97. All response costs incurred by Plaintiff to remediate Dead Creek Segment A have been consistent with the National Contingency Plan, 40 C.F.R. Part 300.

ANSWER:

97. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 97 of the Amended Complaint.

COMPLAINT:

98. Pursuant to Sections 107(a) and 113(f) of CERCLA, 42 U.S.C. §9607(a) and §9613(f), Defendants are liable to Plaintiff for all past response costs incurred by Plaintiff in remediating



Dead Creek Segment A, plus pre-judgment and post-judgment interest.

ANSWER:

98. The allegations of paragraph 98 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

99. Pursuant to §314 of the Illinois Environmental Protection Act, Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1003.14, the chemicals contained in Defendant's industrial wastewaters which were released into Dead Creek Segment A constitute hazardous substances.

ANSWER:

99. Monsanto denies the allegations contained in paragraph 99 of the Amended Complaint.

COMPLAINT:

100. Defendant, as the generator of the hazardous substances and the owner/operator of the facility from which the hazardous substances were released into Dead Creek Segment A, has engaged in abnormally dangerous or ultrahazardous activities. Therefore, Defendant is strictly liable for all damages arising from its manufacture, handling and disposal of the hazardous substances.

ANSWER:

100. Monsanto denies the allegations contained in paragraph 100 of the Amended Complaint.

COMPLAINT:

101. Defendant is strictly liable for all direct and consequential damages suffered by Plaintiff as a result of its aforesaid conduct.

ANSWER:

101. Monsanto denies the allegations contained in paragraph 101 of the Amended Complaint.

COUNT V

PRIVATE NUISANCE

COMPLAINT:

102. Plaintiff brings this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), in particular Sections 107(a) and 113(b), thereof, 42 U.S.C. §9607 and §9613(b), to recover response costs expended by Plaintiff to address contamination by Defendant of property owned by Plaintiff. Plaintiff further asserts claims for damages and reimbursement under state common law.

ANSWER:

102. Monsanto admits that Count V attempts to assert a claim under state common law. Monsanto denies each and every other allegation of paragraph 102 of the Amended Complaint.

COMPLAINT:

103. This Court has jurisdiction over the subject matter pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §9607 and §9613(b); 28 U.S.C. §1331 and 28 U.S.C. §1367 (codifying the doctrines of ancillary and/or pendent jurisdiction).

ANSWER:

103. The allegations of paragraph 103 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

104. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and 42 U.S.C. §9613(b) because the claims stated herein arose and the threatened and actual releases of hazardous substances occurred in this district.

ANSWER:

104. Monsanto admits that Plaintiff purports to state claims that would cause venue to be proper in this district pursuant to

28 U.S.C. §1391(b). Monsanto denies each and every other allegation of paragraph 104 of the Amended Complaint.

COMPLAINT:

105. Plaintiff is a Delaware corporation with its principal place of business in Sauget, Illinois.

ANSWER:

105. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 105 of the Amended Complaint.

COMPLAINT:

106. Defendant is a Delaware corporation with its principal place of business in St. Louis, Missouri.

ANSWER:

106. Monsanto admits that it is a Delaware corporation with its principal place of business in St. Louis County, Missouri.

COMPLAINT:

107. Plaintiff owns and operates a manufacturing facility (the "Cerro Plant") in the Village of Sauget, St. Clair County, Illinois.

ANSWER:

107. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 107 of the Amended Complaint.

COMPLAINT:

108. The Cerro Plant currently encompasses within the boundaries of its property, a portion of a watercourse commonly known as Dead Creek (hereinafter "Dead Creek Segment A").

ANSWER:

108. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 108 of the Amended Complaint.

COMPLAINT:

109. Dead Creek Segment A is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(a)(9).

ANSWER:

109. The allegations of paragraph 109 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

110. On or about July 5, 1990, the State of Illinois filed a civil action against Plaintiff for declaratory relief and recovery of costs pursuant to CERCLA, the Illinois Environmental Protection Act and State common law nuisance.

ANSWER:

110. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 110 of the Amended Complaint.

COMPLAINT:

111. The State of Illinois alleged in the Complaint that Dead Creek Segment A had received a variety of waste or other materials as a result of direct and indirect discharges of industrial effluent, precipitation runoff, seepage and other means and as a result, had become contaminated.

ANSWER:

111. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 111 of the Amended Complaint.

COMPLAINT:

112. The wastes and other materials contaminating Dead Creek Segment A include "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

ANSWER:

112. The allegations of paragraph 112 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

113. On or about July 5, 1990, Plaintiff and the State of Illinois amicably resolved the aforementioned litigation by entering into a Consent Decree, a copy of which is attached as Exhibit A, pursuant to which Plaintiff has implemented the removal action recommended in the Site Investigation/Feasibility Study which had been conducted by Plaintiff for Dead Creek Segment A.

ANSWER:

113. Monsanto admits that Plaintiff has attached an Exhibit A to the Amended Complaint that purports to be a consent decree. Monsanto lacks knowledge or information sufficient to form a belief as to the accuracy of Exhibit A or the truth or falsity of the remaining allegations of paragraph 113 of the Amended Complaint.

COMPLAINT:

114. Upon information and belief, prior to August 1977, Defendant operated a PCB production facility at its Krummrich Manufacturing Plant which is located at the northern tip of Dead Creek Segment A. In addition, since its acquisition of the Krummrich facility in 1917, Defendant has used the facility for a variety of purposes including the manufacture and refinement of chemicals for commercial, industrial and agricultural use.

ANSWER:

114. Monsanto admits that prior to August 1977 it produced polychlorinated biphenyls ("PCBs") at its Krummrich Plant, which is located north of Dead Creek Segment A. Monsanto further admits that it has manufactured and refined chemicals at the Krummrich Plant for commercial, industrial, and agricultural use since its acquisition of the Plant in 1917. Monsanto denies the remaining allegations of paragraph 114 of the Amended Complaint.

COMPLAINT:

115. During the course of Defendant's operation of its Krummrich facility, it discharged industrial wastewaters containing hazardous substances, including but not limited to PCB and PCB manufacturing precursors, into Dead Creek Segment A.

ANSWER:

115. Monsanto denies the allegations contained in paragraph 115 of the Amended Complaint.

COMPLAINT:

116. Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2), provides, in pertinent part:

any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of . . . is liable for any necessary costs of response incurred by any other person consistent with the National Contingency Plan.

ANSWER:

116. Monsanto admits that Plaintiff purports to quote from §107 of CERCLA. All other allegations of paragraph 116 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

117. Defendant's Krummrich Manufacturing Plant, together with its appurtenant equipment, pipes, drainage and sewer systems constitutes a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(a)(9).

ANSWER:

117. The allegations of paragraph 117 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

118. Section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(3), provides, in pertinent part:

any person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances, owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances . . . shall be liable for . . . any necessary costs of response incurred by any other person consistent with the National Contingency Plan.

ANSWER:

118. Monsanto admits that Plaintiff purports to quote from §107 of CERCLA. All other allegations of paragraph 118 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

119. Section 113(f) of CERCLA, 42 U.S.C. §9613(f), provides that any person who is liable or potentially liable, jointly and severally, under §107(a) is also liable in contribution.

ANSWER:

119. The allegations of paragraph 119 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

120. Defendant is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21), who otherwise arranged for the disposal of its industrial wastewaters from the Krummrich facility which contained hazardous substances by discharging such hazardous substances into Dead Creek Segment A or who owned and operated the Krummrich facility at the time its industrial wastewaters containing hazardous substances were disposed of through the Krummrich facility drainage and/or sewer system and released into Dead Creek A. Therefore, Defendant is a responsible person within the meaning of Section 107 of CERCLA, 42 U.S.C. §9607.

ANSWER:

120. Monsanto denies the allegations contained in paragraph 120 of the Amended Complaint.

COMPLAINT:

121. Defendant's discharge of wastewater containing hazardous substances into Dead Creek Segment A constitutes a "release" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

ANSWER:

121. Monsanto denies the allegations contained in paragraph 121 of the Amended Complaint.

COMPLAINT:

122. As a result of Defendant's discharge of hazardous substances into Dead Creek Segment A, Plaintiff has incurred necessary response costs in the approximate amount of \$12,836,609. Plaintiff has demanded that Defendant reimburse it for these costs, but Defendant has refused.



ANSWER:

122. Monsanto admits that Plaintiff has demanded that Monsanto reimburse it for costs allegedly relating to Dead Creek Segment A and that Monsanto has refused to pay the amount demanded. Monsanto denies all of the remaining allegations of paragraph 122 of the Amended Complaint.

COMPLAINT:

123. All response costs incurred by Plaintiff to remediate Dead Creek Segment A have been consistent with the National Contingency Plan, 40 C.F.R. Part 300.

ANSWER:

123. Monsanto lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 123 of the Amended Complaint.

COMPLAINT:

124. Pursuant to Sections 107(a) and 113(f) of CERCLA, 42 U.S.C. §9607(a) and §9613(f), Defendants are liable to Plaintiff for all past response costs incurred by Plaintiff in remediating Dead Creek Segment A, plus pre-judgment and post-judgment interest.

ANSWER:

124. The allegations of paragraph 124 of the Amended Complaint are legal conclusions to which no responsive pleading is required. All such allegations are therefore denied.

COMPLAINT:

125. Pursuant to §314 of the Illinois Environmental Protection Act, Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1003.14, the chemicals contained in Defendant's industrial wastewaters which were released into Dead Creek Segment A constitute hazardous substances.

ANSWER:

125. Monsanto denies the allegations contained in paragraph 125 of the Amended Complaint.

COMPLAINT:

126. Defendant, as the generator of the hazardous substances and the owner/operator of the facility from which the hazardous substances were released into Dead Creek Segment A, has engaged in abnormally dangerous or ultrahazardous activities. Therefore, Defendant is strictly liable for all damages arising from its manufacture, handling and disposal of the hazardous substances.

ANSWER:

126. Monsanto denies the allegations contained in paragraph 126 of the Amended Complaint.

COMPLAINT:

127. Defendant is strictly liable for all direct and consequential damages suffered by Plaintiff as a result of its aforesaid conduct.

ANSWER:

127. Monsanto denies the allegations contained in paragraph 127 of the Amended Complaint.

COMPLAINT:

128. Defendant knew or should have known that its discharge of industrial wastewaters containing hazardous substances into Dead Creek Segment A would, or would be likely to, result in the invasion of Plaintiff's property interest in Dead Creek Segment A.

ANSWER:

128. Monsanto denies the allegations contained in paragraph 128 of the Amended Complaint.

COMPLAINT:

129. Defendant's discharges of hazardous substances constitutes a private nuisance which resulted in the contamination of Dead Creek Segment A.

ANSWER:

129. Monsanto denies the allegations contained in paragraph 129 of the Amended Complaint.

COMPLAINT:

130. Defendant is liable for all direct and consequential damages suffered by Plaintiff as a result of its aforesaid unreasonable and wrongful conduct.

ANSWER:

130. Monsanto denies the allegations of paragraph 130 of the Amended Complaint.

AFFIRMATIVE DEFENSES

1. The response costs allegedly incurred by Plaintiff are inconsistent with the National Contingency Plan. By reason of the foregoing, Plaintiff is not entitled to recover from Monsanto some or all of its alleged response costs and other relief requested in the Amended Complaint.

2. Plaintiff is not entitled to recover from Monsanto some or all of its alleged response costs and other relief requested in the Amended Complaint, because Monsanto did not release, dispose of, or arrange for disposal of hazardous substances that have allegedly necessitated the response activity which Plaintiff claims it has undertaken.

3. Plaintiff's claim for the recovery of response costs is a claim for restitution which is barred on the equitable grounds of laches because of the unreasonable length of time that Plaintiff took before asserting its claim.

4. Plaintiff's claim for the recovery of response costs is a claim for restitution which is barred on equitable grounds because of Plaintiff's unclean hands.

5. Plaintiff should be estopped from asserting a claim for the recovery of response costs because Plaintiff disposed of hazardous substances in Dead Creek Sector A and cannot now in good faith complain of similar alleged conduct by Monsanto.

6. Plaintiff's claims are barred by the applicable statute of limitations.

7. Plaintiff is barred from recovery against Monsanto because the damage, if any, resulted in whole or in part from Plaintiff's own contributory negligence and/or contributory fault, or comparative fault and/or comparative negligence; therefore, Plaintiff is responsible through its own conduct for some or all of the claimed damages that may have resulted.

8. Plaintiff received a reduced price on the purchase of the involved site because of the contamination thereof. To require Monsanto to reimburse Plaintiff's cleanup costs would unjustly enrich Plaintiff. Plaintiff is therefore not entitled to recover the relief requested in the Amended Complaint.

9. When Plaintiff acquired Dead Creek Segment A it knew the extent of contamination of Dead Creek Segment A and thus was not an innocent purchaser. Therefore, Plaintiff is liable for any necessary costs of response it incurred, as the owner and operator of a facility, pursuant to 42 U.S.C. §9607(a)(1). In the event Monsanto is found to be liable for any necessary

response costs, Monsanto is entitled to have the necessary costs of response allocated between itself and Plaintiff.

10. Plaintiff owned Dead Creek Segment A at the time that it disposed of hazardous substances at that facility. Therefore, Plaintiff is liable for any necessary costs of response it incurred, pursuant to 42 U.S.C. §9607(a)(2). In the event Monsanto is found to be liable for any necessary response costs, Monsanto is entitled to have the necessary costs of response allocated between itself and Plaintiff.

11. Plaintiff arranged for disposal of its hazardous substances at Dead Creek Segment A. Therefore, Plaintiff is liable for any necessary costs of response it incurred, pursuant to 42 U.S.C. §9607(a)(3). In the event Monsanto is found to be liable for any necessary response costs, Monsanto is entitled to have the necessary costs of response allocated between itself and Plaintiff.

12. In the alternative, Dead Creek is a navigable waterway of the United States, and the site is not the property of Plaintiff. By reason of the foregoing, Plaintiff is not entitled to recover from Monsanto some or all of its alleged response costs and other relief requested in the Amended Complaint.

13. Nothing that Monsanto allegedly disposed of on the site increased the cost of cleanup of the site over and above what Plaintiff would have had to pay to clean up the hazardous substances it disposed of on the site. By reason of the foregoing, Plaintiff is not entitled to recover from Monsanto

some or all of its alleged response costs and other relief requested in the Amended Complaint.

14. Some or all of any release or threat of release of a hazardous substance, if any, and the response costs resulting therefrom were caused solely by an act or omission of a third party other than an employee or agent of Monsanto or other than one whose act or omission occurred in connection with a contractual relationship, existing directly or indirectly with Monsanto. Monsanto: (a) exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such substance, in light of all relevant facts and circumstances; and (b) took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions. By reason of the foregoing, Plaintiff is not entitled to recover from Monsanto some or all of its alleged response costs and other relief requested in the Amended Complaint.

15. Any alleged releases by Monsanto onto the site were permissible discharges. By reason of the foregoing, Plaintiff is not entitled to recover from Monsanto some or all of its alleged response costs and other relief requested in the Amended Complaint.


16. Monsanto reserves the right to assert additional affirmative defenses upon completion of discovery.

WHEREFORE, Monsanto respectfully prays the Amended Complaint and the claims asserted therein be dismissed; that judgment be

entered for Monsanto and against Plaintiff; and that Monsanto have such other and further relief as may be just and proper.

Respectfully submitted,

COBURN & CROFT

By:   
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Attorneys for Defendant  
Monsanto Company

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he caused a copy of the foregoing to be mailed, first class postage prepaid this 25th day of April, 1994, to:

Alan C. Kohn, Esq.  
Rebecca Stith, Esq.  
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